

CHRISTIAN F. MURER

IBLA 82-980

Decided November 22, 1982

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease W-30302 to have terminated by operation of law.

Vacated and Remanded.

1. Oil and Gas Leases: Termination -- Oil and Gas Leases: Extensions

Where BLM holds that a noncompetitive oil and gas lease has expired because drilling operations were not diligently pursued after the end of its primary term and on appeal the operator presents evidence raising an issue of fact regarding drilling operations, the case will be remanded for a factual determination of whether the lease is entitled to a 2-year extension under 43 CFR 3107.2-3.

APPEARANCES: Paul F. Hultin, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a determination by the Wyoming State Office, Bureau of Land Management (BLM), holding lease W-30302 to have terminated by operation of law at the end of its primary term on August 31, 1981.

The lessee of record, Caribou Energy Inc., has not participated in the appeal. Appellant herein is Caribou's assignee of working and operating rights in the lease.

On June 11, 1982, the District Supervisor, Minerals Management Service wrote appellant as follows:

In the absence of an approved cessation of operations and since no physical or mechanical changes have occurred in the

above referenced well for over 60 days, the well must be considered as either completed, suspended, or temporarily abandoned and diligent operations must be considered to have ceased on the date the rig was released. This situation, and the fact that the above referenced well never penetrated a potentially productive horizon, show that drilling operations have not been diligently prosecuted and that regulation 3107.2-3 of the Code of Federal Regulations - Title 43, has not been fulfilled.

Because of this, we are recommending that the above referenced lease, W-30302, be terminated as of August 31, [1981].

BLM issued appellant a letter decision dated June 16, 1982, holding the lease to have expired for the reason that it was not eligible for extension pursuant to 43 CFR 3107.2-3. That regulation states:

§ 3107.2-3 Period of extension.

Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

In an identical decision dated June 21, 1982, BLM also advised Caribou of the termination.

In his statement of reasons appellant asserts that the initial well on the subject lease was spudded on the afternoon of August 31, 1981, that a rig was in place, a hole being drilled, and conductor pipe set. Appellant has submitted the affidavit of Arlo See, Murray Drilling Services, attesting that these activities were performed. Appellant's statement of reasons narrates in detail the drilling and associated procedures carried on in the weeks subsequent to August 31. Appellant has requested a hearing to present evidence on issues of fact relating to the diligence question.

The record before us indicates that BLM has not evaluated the allegations of compliance with 43 CFR 3107.2-3 made by appellant on appeal to the Board. We will therefore remand the case to the State Office to afford appellant the opportunity to present his evidence to BLM in support of his position. Should BLM determine that actual drilling operations, were diligently pursued the lease will be entitled to a 2-year extension. If BLM finds that the lease terminated at the end of its primary term and appellant disputes that factual determination, appellant may at that stage request a hearing before an Administrative Law Judge. Willard Pease Oil and Gas Co., 32 IBLA 379 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded for further action consistent with this decision.

Gail M. Frazier
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

